



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201027061

Uniform Issue List: 408.03-00

APR 15 2010

XXXXX  
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5 E.T.E.P. R.A.T.2

Legend:

Taxpayer A= XXXXX

Bank M= XXXXX

Bank O= XXXXX

IRA X= XXXXX

Account Y= XXXXX

Amount S= XXXXX

Amount T= XXXXX

Amount U= XXXXX

Date1= XXXXX

Date 2= XXXXXX

Date 3= XXXXX

Date 4= XXXXX

Dear XXXXX:

XXXXXX

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This is in response to your June 24, 2009 letter, as supplemented by additional correspondence dated September 28, 2009 submitted on your behalf, in which you requested a waiver of the 60-day rollover requirement contained in Section 408(d)(3) of the Internal Revenue Code (the "Code"). The following facts and representations have been submitted under penalty of perjury in support of your ruling request.

Taxpayer A, age XXXXX represents that she received a distribution from IRA X of Amounts S and T, totaling Amount U. Taxpayer A asserts that her failure to accomplish a rollover of Amount U within the 60-day period prescribed by Section 408(d)(3) of the Code was due to a Bank M employee's failure to follow Taxpayer A's instructions to transfer Amount U from IRA X into an IRA held by Bank O, which led to Amount U being placed in a non-IRA account. Taxpayer asserts that Amount U has not been used for any purpose.

Taxpayer A represents that on Date 1 she provided written instructions to Bank M to rollover Amount U from IRA X to a qualified IRA, held by Bank O. Bank M transferred a check for Amount S on Date 2, and a check for Amount T on Date 3 to Account Y. The distribution was transferred in the form of two separate checks because Amount S was a money redemption fund, which could be immediately distributed, whereas Amount T was a liquidated mutual fund, which by law could not be immediately disbursed.

The transfer of Amount U from IRA X to Account Y was intended to be used to purchase an annuity within a new IRA account. However, an employee of Bank M deposited Amount S and Amount T respectively into Account Y, instead of a traditional IRA. Taxpayer A asserts that on or about Date 4, she discovered that Amount U had not been properly rolled over. Bank M acknowledged that the failure was due to an error of one of its employees.

Based upon the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in Section 408(d)(3) of the code with respect to the distribution of Amount U.

Section 408(d)(1) of the Code provides that, except as otherwise provided in Section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute as the case may be, in the manner provided under Section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual to whose benefit the account is maintained if:

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- i. the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which he receives the payment or distribution; or,
- ii. the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to Section 408(d)(3)).

Section 408(d)(3)(i) of the Code provides that the Secretary may waive the 60-day requirement under Sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under Section 408(d)(3)(i) of the Code.

Section 408(d)(3)(B) of the Code provides that Section 408(d)(3) does not apply to any amount described in Section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in Section 408(d)(3)(A)(i) from an IRA which was includible in gross income because of the application of 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of Section 408(d) do not apply to any amount required to be distributed under Section 408(a)(6).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to Section 408(d)(3)(i) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution, (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed; and, (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish the rollover within the 60-day period prescribed by Section 408(d)(3) of the Code was due to an error by Bank M

which led to Amount U being placed in a non-IRA account instead of being transferred to a rollover IRA.

Therefore, pursuant to Section 408(d)(3)(I) of the Code, the IRS hereby waives the 60-day rollover requirement with respect to the distribution of Amount U. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount U into a rollover IRA. Provided all other requirements of Section 408(d)(3) of the Code, except the 60-day rollover requirement are met with respect to such contribution, Amount U will be considered a rollover contribution within the meaning of Section 408(d)(3) of the Code.

Please note that, pursuant to Section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of Code Section 401(a)(9) minimum required distributions.

No opinion expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions regarding this ruling, please contact XXXXX,  
SE:T:EP:RA:T2, I.D. No. at XXXXX.

Sincerely yours,



Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 2